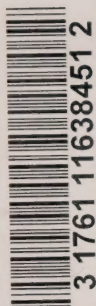


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Report concerning alleged in-
stances of resale price main-
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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

Concerning Alleged Instances of Resale Price Maintenance
of Soap Products in the
Montreal District

DEPARTMENT OF JUSTICE
OTTAWA
1953

RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

SOAP AND SOAP PRODUCTS

ALLEGED INSTANCES OF RESALE PRICE MAINTENANCE
IN THE MONTREAL DISTRICT

COMBINES INVESTIGATION ACT




918316

RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.
Chairman

Guy Favreau, B.A., LL.B.
Member

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RESTRICTIVE TRADE PRACTICES COMMISSION
Ottawa

Government
Publications

May 1, 1953

Honourable Stuart S. Garson, Q. C.,
Minister of Justice,
Ottawa

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission on resale price maintenance in the sale of soap and soap products.

The report deals with certain actions of The Procter & Gamble Company of Canada, Limited, in the Province of Quebec during 1952.

The inquiry was initiated by the Commissioner of the Combines Investigation Act before the coming into force on November 1, 1952, of Chapter 39 of the Statutes of Canada, 1952, and the matter was brought before the Commission under the transitional provisions of the said Chapter 39 and has been dealt with in accordance with the provisions of Sections 18 and 19 of the Combines Investigation Act, as amended.

Argument was heard by the Commission at Montreal, P. Q., on November 24, 1952, when Mr. F. N. MacLeod appeared on behalf of the Director of Investigation and Research and Messrs. Erskine Buchanan, Q. C., and B.M. Osler appeared on behalf of The Procter & Gamble Company of Canada, Limited, and other interested parties.

Yours faithfully,

(Sgd.) C. R. Smith

Chairman

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CHAPTER 1

INTRODUCTION

This inquiry was brought before the Restrictive Trade Practices Commission under the transitional provisions of Chapter 39 of the Statutes of Canada, 1952. The relevant provisions are found in Subsections (1) and (4) of Section 10 of said Chapter 39, and read as follows:

"(1) Where, prior to the coming into force of this Act,

- (a) the Commissioner of the Combines Investigation Act had caused an inquiry or investigation to be made under the Combines Investigation Act,
- (b) no report had been made under subsection one of section twenty-seven of that Act, and
- (c) the Commissioner had exercised any of the powers conferred upon him by section twenty-two of that Act,

the inquiry or investigation may be continued and completed and report thereon may be made as though this Act had not been passed. "

"(4) In the case of an inquiry or investigation referred to in subsection one . . . of this section, the Commissioner of the Combines Investigation Act, or the special commissioner, as the case may be, may, instead of making a report as therein provided, prepare a statement of evidence and submit it to the Restrictive Trade Practices Commission and to each person against whom an allegation is made therein, and for the purposes of the Combines Investigation Act, as amended by this Act, such statement shall be deemed to be a statement submitted to the Commission pursuant to subsection one of section eighteen of the said Act as enacted by this Act. "

Prior to the coming into force of the said Chapter 39, the Commissioner of the Combines Investigation Act had caused an inquiry or investigation to be made under the Combines Investigation Act and had caused a number of witnesses to be examined under oath, but no report had been made by him under Subsection (1) of Section 27 of that Act.

After the said Chapter 39 came into force on the 1st day of November, 1952, the Commissioner, now the Director of Investigation and Research under the Combines Investigation Act, acting under Subsection (4) of Section 10 of said Chapter 39, submitted to the Restrictive Trade Practices Commission a statement of evidence, dated the 6th day of November, 1952, and containing the following allegations:

1. That The Procter & Gamble Company of Canada, Limited, being a dealer within the meaning of Section 34 of the Combines Investigation Act (enacted as Section 37A by Chapter 30 of the Statutes of Canada, 1951 (2nd Session) and re-numbered by Chapter 39 of the Statutes of Canada, 1952) did, on or about the 22nd day of April, 1952, by threat, promise or other means, attempt to require or induce The Dealers' Supply Company Limited, of Granby, in the Province of Quebec, to resell soap and soap products at a price not less than a minimum price specified by The Procter & Gamble Company of Canada, Limited.
2. That, after the attempt alleged in the foregoing paragraph had failed, The Procter & Gamble Company of Canada, Limited, a dealer as aforesaid, did, between the 27th day of May, 1952, and the 6th day of August, 1952, refuse to sell or supply soap or soap products to The Dealers' Supply Company Limited aforesaid for the reason that The Dealers' Supply Company Limited had refused to resell or to offer for sale the said soap or soap products at a price not less than a minimum price specified by The Procter & Gamble Company of Canada, Limited.
3. (a) The misconduct alleged in paragraphs 1 and 2 hereof was carried out by The Procter & Gamble Company of Canada, Limited, by and through its officials and employees, all of whom were acting in the course of their employment and within the scope of their authority as such officials or employees.

(b) The said alleged misconduct resulted from the activities of officials and employees of The Procter & Gamble Company of Canada, Limited, at its Montreal branch office and not as the result of a fixed or settled general policy of the said company.

The Commissioner's statement of evidence further stated that in his opinion the following persons, who were officials at the Montreal branch office of The Procter & Gamble Company of Canada, Limited, during the whole or part of the periods mentioned in paragraphs 1 and 2 of the above allegations, were concerned in the alleged misconduct:

R. E. Goudreau
L. C. Tremblay
T. J. Petit
F. Mella
P. H. Louette
P. Shea
H. VanReet
D. K. Russell

1. Legislation Concerning Resale Price Maintenance

The Parliament of Canada, following and in accordance with recommendations contained in the interim report in October, 1951, of the Committee to Study Combines Legislation, dealt specifically with the problem of resale price maintenance.

Resale price maintenance was defined in the Committee's report in the following terms:

"By resale price maintenance we understand the practice designed to ensure that a particular article shall not be resold by retailers, wholesalers or other distributors at less than the price prescribed by the supplier, that is, in most cases, the manufacturer."

By Section 11 of Chapter 30 of the Statutes of Canada, 1951 (2nd Session) a new Section 37A was added to the Combines Investigation Act, which Section 37A was re-numbered as Section 34 by Section 4 of Chapter 39 of the Statutes of Canada, 1952. This Section 34 enacts as follows:

"34. (1) In this section 'dealer' means a person engaged in the business of manufacturing or supplying or selling any article or commodity.

(2) No dealer shall directly or indirectly by agreement, threat, promise or any other means whatsoever, require or induce or attempt to require or induce any other person to resell an article or commodity

- (a) at a price specified by the dealer or established by agreement,
- (b) at a price not less than a minimum price specified by the dealer or established by agreement,
- (c) at a markup or discount specified by the dealer or established by agreement,
- (d) at a markup not less than a minimum markup specified by the dealer or established by agreement, or
- (e) at a discount not greater than a maximum discount specified by the dealer or established by agreement,

whether such markup or discount or minimum markup or maximum discount is expressed as a percentage or otherwise.

(3) No dealer shall refuse to sell or supply an article or commodity to any other person for the reason that such other person

(a) has refused to resell or to offer for resale the article or commodity

- (i) at a price specified by the dealer or established by agreement,
- (ii) at a price not less than a minimum price specified by the dealer or established by agreement,
- (iii) at a markup or discount specified by the dealer or established by agreement,
- (iv) at a markup not less than a minimum markup specified by the dealer or established by agreement, or
- (v) at a discount not greater than a maximum discount specified by the dealer or established by agreement, or

(b) has resold or offered to resell the article or commodity

- (i) at a price less than a price or minimum price specified by the dealer or established by agreement,
- (ii) at a markup less than a markup or minimum markup specified by the dealer or established by agreement, or
- (iii) at a discount greater than a discount or maximum discount specified by the dealer or established by agreement.

(4) Every person who violates subsection two or three is guilty of an indictable offence and is liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding two years or to both. "

This new section of the Combines Investigation Act forbids a manufacturer or other supplier from requiring or inducing, directly or indirectly, any other person to resell an article at a specified price or at not less than a minimum price, and makes it unlawful for a supplier to refuse to sell or supply an article or commodity to any other person for the reason that such person has resold or offered to resell the article or commodity at less than a price specified by the supplier or has refused to resell or offer for resale the commodity at not less than a specified price.

2. Hearings and Witnesses

The witnesses who had given evidence prior to the 1st day of November, 1952, were as follows:

Nelson Roberts Mitchell, Manager of The Dealers' Supply Company Limited, who was examined at the City of Montreal on September 18th, 1952, before J. J. Quinlan, Combines Investigation Officer,

and the following officials and employees of The Procter & Gamble Company of Canada, Limited, all of whom were examined at Montreal on October 20th, 1952, before F. N. MacLeod, Combines Investigation Officer:

Louis Charles Tremblay, General Supervisor of Salesmen in the Greater Montreal Territory;

Theophile Joseph Petit, Office Manager of the Montreal District;

Robert Eugene Goudreau, District Sales Manager for the Montreal District, comprising all but the extreme western portion of the Province of Quebec, also the Maritime Provinces, including Newfoundland;

Frank Mella, Territorial Manager for part of Montreal and also the Eastern Townships of the Province of Quebec.

The hearing of argument before the Commission was held at the City of Montreal on the 24th day of November, 1952. On that date The Procter & Gamble Company and the persons referred to in the statement of evidence were afforded full opportunity to present to the Commission any additional evidence they might think desirable. Additional evidence was given accordingly by Mr. Goudreau, and also by Mr. William E. Williams, President and General Manager of The Procter & Gamble Company of Canada, Limited.

The other persons named in the Commissioner's statement of evidence were not called as witnesses to give evidence at either of the hearings of September 18th and October 20th, 1952. They were all given adequate notice in writing in advance of the hearing before the Commission on November 24th, 1952. This notice informed them that persons against whom an allegation had been made in the Commissioner's statement of evidence would be allowed full opportunity to be heard in person or by counsel at the hearing. None of them asked to be heard at the hearing, and none of them has made any statement or representation to the Commission at any time.

CHAPTER II

ORGANIZATION AND OPERATION OF THE PROCTER & GAMBLE COMPANY OF CANADA, LIMITED

1. Organization of the Company

The Procter & Gamble Company of Canada, Limited, hereinafter sometimes referred to as the Procter & Gamble Company or as Procter & Gamble, is incorporated under the Canadian Companies Act. It engages in a very large way in the manufacture and sale of soap and related products, and cooking fats. Its head office is in the City of Toronto, but all its manufacturing activities are carried on at one plant in the City of Hamilton. Its products are sold in all parts of Canada and are extensively advertised by the Company on a nationwide basis.

To facilitate the sale of its products, the Company has divided the whole country into districts, each in charge of a district sales manager, under whom are a number of officials, salesmen and other employees. One of these districts is the Montreal District, which comprises all the Province of Quebec except the extreme western portion, and also the Maritime Provinces, including Newfoundland. The District Sales Manager for this district, at all times relevant to this inquiry, was Mr. Robert Eugene Goudreau. Immediately under him was a General Supervisor of Salesmen for the Greater Montreal Area, Louis Charles Tremblay.

The Province of Quebec, within the Montreal District, was at all relevant times divided territorially into two units - Unit "A" and Unit "B". Unit "A" comprised all the Province of Quebec except the City of Quebec and Lower Quebec. Mr. Tremblay stated in evidence that each unit has a territorial manager. On the other hand, Frank Mella stated that he was Territorial Manager for part of the City of Montreal and the Eastern Townships, his territory including the Town of Granby. While these statements do not entirely agree, it is clear that Frank Mella was Territorial Manager for territory which includes the Town of Granby. It was activities in connection with the Company's business in Granby that led to this inquiry

2. Method of Selling

The Company sells its products in three ways, at different prices, based upon volume, as follows:

- (a) in carload lots;
- (b) in less than carload lots;
- (c) under the "Pool Car" system.

The lowest price is charged for products sold in carload lots. Purchasers in carload lots are normally large buyers having their own warehouse facilities, such as jobbers, large department stores and chain-store organizations.

Direct sales by the Company to retailers in less than carload lots are apparently almost negligible. Buyers of such quantities normally buy from jobbers, or under the "Pool Car" plan. Buyers from jobbers, of course, pay a higher price than buyers in carload lots.

The "Pool Car" plan was instituted by the Company a few years ago, on a trial basis, and has been in full operation throughout Canada, except perhaps British Columbia, since 1949. This plan is designed to enable small retailers (and some others, such as individual units or members of a chain-store organization), who cannot buy in carload lots, to get the Company's merchandise into their stores at the same or approximately the same cost as applies to the big chain stores. The prices charged to "Pool Car" customers are, according to the evidence, slightly higher than the prices for carload lot sales, but well below the prices at which most retailers can make purchases from a jobber's warehouse when the jobber bears the costs of handling, warehousing and delivery. A chain-store organization, buying in carload lots, has the benefit of the slightly lower carload lot price, but this advantage is balanced by its costs of warehousing and delivering to its individual stores.

The actual method of operation of the "Pool Car" plan is as follows: The Company's salesman calls on all grocers in a certain geographical area, usually a small area, and takes orders from them according to their requirements - 5 cases from one, 50 from another, and so on. These orders are turned in and accumulated until together they make a carload. Each order is cleared for credit purposes with a jobber or wholesaler indicated by the buyer. The carload is made up at the Company's plant at Hamilton, and shipped from there by rail or truck to a distributing point, from which the goods ordered by each buyer are delivered to him by the Company, by truck. The Company bears all the selling costs and all the delivery costs. The Company bills the designated jobber or wholesaler, who collects from the buyer. The jobber, of course, does not get his usual mark-up on these goods, but he has no selling, warehousing or delivery costs. He assumes the credit risk and collects the purchase price. That is all.

The prices paid by buyers under the "Pool Car" plan do vary to some extent, according to the amount purchased. Mr. Williams, President and General Manager of the Company, stated in his evidence, in this connection:

"In this pool-car plan the man who buys from five to twenty-four cases of our merchandise, in the Montreal area, would pay three per cent over carload price, plus five cents to help defray the trucking cost. Five cents: that is about half of one per cent of the average cost of a case of our products, the average cost being only about \$10.00 per case. From 25 to 99 cases he pays two per cent plus five cents a case; from 100 to 249, one per cent plus five cents a case; and with most wholesalers - not all,

because they won't all agree to it - on 250 cases there is no mark-up at all over carload price, except 5 cents a case: that is, the jobber will handle the billing for only five cents a case."

(Evidence, November 24, 1952, p.16)

The jobber or wholesaler, for his services, gets the five cents a case plus the small percentage stated by Mr. Williams, and in addition the Company pays the jobber a one-per-cent service fee on all orders shipped through him.

The Company maintains that its "Pool Car" plan is reasonably profitable to the wholesaler and of particular value to the small retailer from a competitive point of view. Comparing the small retailer's position under this plan with that of a chain store, it appears that, on a very small purchase, say, five cases, the small retailer pays three per cent plus five cents, or about three and one-half per cent above the carload price. The chain store, buying in carload lots, saves this three and one-half per cent, but, as already stated, incurs the costs of handling the goods through its warehouse.

The Company's view of the competitive value of the "Pool Car" plan to the retailer was stated by Mr. Williams in his evidence as follows:

"So, we say, in effect, to every retail grocer of the 44,000 or so in Canada, 'We will deliver merchandise to you at a price that is as low on our brands as any chain store in Canada can have that same case of merchandise put into its store. In other words, if you want to be competitive, our plan means that you can compete on the largest selling and most widely advertised line of soap products in Canada.'"

(Evidence, November 24, 1952, p.18)

The Company also maintains that its products are handled through merchandising channels to the consumer at very low mark-ups. Mr. Williams cited to the Commission several of the Company's products, and the regular prices at which they had been sold in retail stores in the City of Montreal during the two weeks prior to the hearing at which he gave evidence. These prices showed that the merchandise, in Mr. Williams' words (Evidence, November 24, 1952, p. 24): "is moving from the manufacturer to the ultimate consumer at mark-ups ranging from $4\frac{1}{2}$ to 6 per cent. That is why I say it is so important that we have a pool-car plan in operation." The Company contends that in the face of such small mark-ups between manufacturer's price and consumer's price, the small retailer cannot possibly compete if he purchases in the ordinary way through a jobber, and that the "Pool Car" plan overcomes this difficulty.

Apparently the Company's "Pool Car" plan has been a highly successful method of selling the Company's products. In Mr. Williams' evidence we find the following:

"Q. Mr. Williams, what percentage of your sales in the Province of Quebec are on this pool-car basis?

A. For the first eight months of this year the figures that we have indicate that of all the merchandise sold through retailers, - that is, excluding chain store warehouse purchases, - 76 per cent of all the merchandise was sold by means of the pool-car plan to the independent retailer, or approximately three-quarters."

(Evidence, November 24, 1952, p.19)

In connection with its sales to jobbers, the Company from time to time gets out and sends to jobbers a list called a "suggested price list". This is a list showing prices for the Company's various products which it is suggested the jobber shall charge on resale as his jobber warehouse price. The prices shown on this list are always higher than the prices charged to retailers under the "Pool Car" plan. Sometimes the "suggested price list" also contains a suggested price list for "Pool Car" sales, graded according to quantity, as described in Mr. Williams' evidence quoted earlier in this report.

3. The Company's Dealings with The Dealers' Supply Company Limited

One of the jobbers with which the Company has been doing business for many years is The Dealers' Supply Company Limited, sometimes hereinafter referred to as the Dealers' Supply Company, which carries on business at the Town of Granby, in Quebec, and of which Mr. Nelson Roberts Mitchell is Manager. This Company is incorporated under the Canadian Companies Act.

Since the "Pool Car" plan was established in the Granby area by the Procter & Gamble Company, the Dealers' Supply Company has done business with that Company both as a wholesaler acting under and in accordance with the "Pool Car" plan, and as a jobber buying directly from the Procter & Gamble Company's plant and selling to the retail trade in the ordinary way. On sales which it made to the retail trade the prices generally complied with the "suggested jobber warehouse price list" issued to the trade by the Procter & Gamble Company.

In the spring of 1952 the Dealers' Supply Company began selling to certain selected customers Procter & Gamble products from its warehouse stocks at prices below those stated on the current Procter & Gamble "suggested jobber warehouse price list" (Exhibit 1, Evidence, September 18, 1952).

Reports that the Dealers' Supply Company was selling Procter & Gamble products at prices below the suggested jobber warehouse prices soon reached the office of the Montreal District of the Procter & Gamble Company. These reports were apparently verbal, and were made by Procter & Gamble salesmen to Mr. Goudreau, the District Sales Manager, and to Mr. Tremblay, the General Supervisor of Salesmen in the Greater Montreal Area. Mr. Goudreau and Mr. Tremblay discussed the situation created by this new selling policy of the Dealers' Supply Company. What they anticipated was that, if retailers in the Granby area could buy locally from the Dealers' Supply Company at prices equal to or approximately the same as the "Pool Car" plan prices, some at least would do so. This would reduce the number of buyers in that area under the "Pool Car" plan and make it more difficult to secure sufficient orders to make up a carload in that area. To increase the size of the area within and from which the Company would accept orders to make up a carload under the "Pool Car" plan would increase the cost of delivery by truck to the various retailers. On the other hand, if the size of the area was not increased and insufficient orders were obtained to make up a carload lot, then the freight rates from the factory at Hamilton to the trucker distribution point would be higher. If these delivery costs became too high the "Pool Car" plan might have to be abandoned in that area. Mr. Goudreau and Mr. Tremblay regarded the Dealers' Supply Company's new selling policy as an interference with the "Pool Car" plan, under which the great majority of the Company's products sold through retail stores (apart from chain stores) were handled. As Mr. Tremblay put it (Evidence, October 20, 1952, p. 16): "It was decided that we would try and correct the situation." Mr. Goudreau instructed Mr. Tremblay to go to Granby to see Mr. Mitchell, the Manager of the Dealers' Supply Company. He stated in evidence:

"I asked Mr. Tremblay to go down and see The Dealers Supply Company and explain the advantages of this pool-car distribution system, both the advantages to Dealers Supply and the advantages to the retailer, in the pool car plan, and that actually he was hurting the retailer by his desire to offer these goods at a lower price than this suggested warehouse price."

(Evidence, October 20, 1952, p. 52)

Mr. Tremblay went to Granby, accompanied by Mr. Frank Mella, Territorial Manager for the Procter & Gamble Company for the area which includes Granby, and had a lengthy discussion with Mr. Mitchell in the office of the Dealers' Supply Company. There is some conflict in the evidence as to the date of this meeting, Mr. Tremblay stating positively that it was April 22, while Mr. Mitchell stated he could not tell the date, but, as he remembered, it was around the end of May or the first part of June. The Commission thinks the date given by Mr. Tremblay (April 22) is more likely to be accurate.

Mr. Tremblay tried to persuade Mr. Mitchell to give up his new selling policy, and not to sell from the Dealers' Supply Company's warehouse at prices below the prices shown on the "suggested jobber warehouse price list" supplied by the Procter & Gamble Company. There is some conflict between the evidence of Mr. Tremblay and that of Mr. Mitchell as to just what was said at this meeting and what was the outcome of the discussion. However, in the course of his examination under oath at the hearing of October 20, 1952, concerning this conference, Mr. Tremblay was asked the following question and made the following reply:

"Q. Was there any suggestion made to him during the conversation that if he did not correct his prices he might not get supplies?

A. I gave him that to understand."

(Evidence, October 20, 1952, p.20)

Mr. Tremblay further stated that Mr. Mitchell was partly agreeable to their proposals and partly not, that he agreed and then disagreed, that he changed his mind maybe half a dozen times, but that in the final result he said he would correct his prices.

Mr. Mitchell's evidence as to the outcome of the discussion was as follows:

"Q. Then your recollection would be that when Mr. Tremblay left he was somewhat dissatisfied or irritated?

A. I don't know that he was irritated, but he didn't get what he came after."

(Evidence, September 18, 1952, p.16)

A few weeks later Mr. Goudreau and Mr. Tremblay learned from the salesman for the Granby area that the Dealers' Supply Company was again selling Procter & Gamble products at prices lower than the suggested jobber warehouse list prices. Mr. Goudreau thereupon stopped deliveries to the Dealers' Supply Company. His evidence on this point is as follows:

"This was during the month of May. When I found that out, I instructed the office to hold up the orders to Dealers Supply."

(Evidence, October 20, 1952, p.55)

These instructions were embodied in a memorandum issued, as Mr. Goudreau stated, on his personal instructions, read-ind as follows:

"T. J. Petit
Mr. H. VanReet

May 27, 1952.

cc. Mr. P. Shea
Mr. P. H. Louette
Mr. R. E. Goudreau

Dealers Supply Co. Ltd. - Granby, Que.

We have been advised that, effective immediately, neither pool car orders nor direct orders are to be accepted for this dealer.

Would you please be sure that the addressograph plates are removed from the drawer."

(Exhibit 6)

Following the issue of this memorandum Procter & Gamble's salesmen stopped calling on the Dealers' Supply Company, and no orders for "Pool Car" sales were cleared for credit or placed with that Company. The evidence of Mr. Goudreau (October 20, 1952, p. 56) is that one direct order of about \$170.00 for a bulk shortening product (Flake White) was accepted and shipped to the Dealers' Supply Company in July, but that that was the only order shipped to that Company until the month of August.

At least two orders for merchandise were sent to the Procter & Gamble Company by the Dealers' Supply Company in the month of June. One of these, dated June 6, 1952, (Exhibit 3) was 'phoned in accordance with his previous practice, by Mr. Mitchell to a Mr. Pommier, who is the local salesman with headquarters in Granby for the Procter & Gamble Company. This order was apparently forwarded to Mr. Mella, who stated in his evidence (October 20, 1952, pp. 68 and 69) that he had received it and that he held it until the early part of August, at which date, on advice from Mr. Tremblay he had the order shipped to the Dealers' Supply Company.

The second order, dated June 12, 1952, was incorrectly addressed, and there is no evidence that it ever reached the Procter & Gamble Company.

On or about August 6, 1952, Mr. Mitchell telephoned Mr. Tremblay. Mr. Tremblay's evidence about the conversation that ensued is as follows:

"Q. And what was the conversation?

A. He first asked what had happened to some orders he had mailed in. I told him that I didn't know that he had mailed the orders but if they were not shipped possibly they had been suspended. Then Mr. Mitchell said, 'I want to co-operate with your

plan', or something to that effect. I said, 'If that is the case, that is different. If you have sent in any orders, we will see that they are shipped.'

Q. What did you understand his meaning to be when he said that he wanted to co-operate with your plan?

A. That he would discontinue, change his price so that it would not interfere with our general plan of pool-car prices.

Q. By that you mean he would follow the suggested resale prices?

A. Yes.

Q. Was he than reinstated as a wholesaler?

A. Yes."

(Evidence, October 20, 1952,
pp. 22 and 23)

One additional fact requires to be noted. Mr. Tremblay stated in his testimony (October 20, 1952, p. 11) that some two months before the date of the hearing he had had occasion to discuss matters with one other wholesaler in Montreal who was not at that time observing the "suggested resale price list". He stated that, after a discussion with this wholesaler in which he explained Procter & Gamble's position (with respect to the "Pool Car" plan), this wholesaler observed the resale price list. Mr. Tremblay stated that he alone was the one who took part in the discussion for the Company, and that he had taken his instructions from Mr. Goudreau. Here again, when asked:

"Was there any suggestion made to him [i. e., the wholesaler] that if he did not observe the price list he would not get supplies?"

he replied:

"We gave him that to understand, yes."

(Evidence, October 20, 1952, p. 11)

Summary

The foregoing evidence discloses the following facts:

1. That at the meeting in the office of The Dealers' Supply Company Limited in Granby, the date of which was probably April 22nd, 1952, Mr. Tremblay, General Supervisor of Salesmen in the Greater Montreal Territory for the Procter & Gamble Company, did, by threat, promise or other means, attempt to require or induce

the Dealers' Supply Company to resell from its warehouse stocks products of the Procter & Gamble Company at prices not less than prices specified by the Procter & Gamble Company.

2. That subsequently, on or about the 27th day of May, 1952, the Dealers' Supply Company not having complied with the request of the Procter & Gamble Company, Mr. Goudreau, District Sales Manager for the Montreal District for the Procter & Gamble Company, gave instructions to the officials under him that orders for goods were not to be accepted from the Dealers' Supply Company. From that date to the 6th day of August, 1952, except for one order for a bulk shortening product, any orders for goods received by the Procter & Gamble Company from the Dealers' Supply Company were held in the Company's office and the goods ordered were not shipped.

3. Only when The Dealers' Supply Company Limited, on or about the 6th day of August, 1952, indicated willingness to comply with the Procter & Gamble Company's wishes as to resale prices, were orders accepted from and goods shipped to the Dealers' Supply Company.

4. That on one other occasion, probably in the month of August, 1952, Mr. Tremblay used a similar threat to induce another wholesaler in the City of Montreal to resell Procter & Gamble products at prices not less than prices specified by the Procter & Gamble Company.

5. The evidence does not disclose that any officials or employees of the Procter & Gamble Company, other than Mr. Goudreau and Mr. Tremblay, either planned or participated actively in any of the actions mentioned in the preceding paragraphs numbered 1 to 4.

CHAPTER III

ATTITUDE OF THE PROCTER & GAMBLE COMPANY OF CANADA, LIMITED

The Commission is of the opinion that in the instances described in the evidence the Montreal office of the Procter & Gamble Company did attempt to maintain resale prices at the jobber or wholesaler level. Mr. Williams, President and General Manager of the Procter & Gamble Company, whose frankness and co-operative attitude made a very favourable impression upon the Commission, did not attempt to deny that this was so.

In his evidence before the Commission on November 24, 1952, he stated:

"Mr. Goudreau was trying to preserve something which he thought was valuable, and, as I think the testimony shows, he made a mistake, a mistake involving an offence against Canadian law."

(Evidence, p. 30)

Again, when asked if, by the Company's "suggested jobber price list", it did not appear that the Company had, in some measure at least, supported a suggested price for jobbers, Mr. Williams said:

"The evidence is completely clear on that point. If we are judged on these two simple statements, the statements made in the testimony, relating to this one incident, this matter of Dealers Supply, - my Counsel will probably hang me for this when we get outside, - if we are judged on this one instance of Dealers Supply, we are just as guilty as can be. My only point is that this represents one single isolated instance and does not reflect Company policy in any way. We have more than seven hundred jobbers in Canada, and this is the only instance of any jobber being deprived of our merchandise, according to my knowledge and belief; it is an isolated instance. As I say, if we are judged on that isolated instance, we are guilty."

(Evidence, November 24, 1952,
pp. 46 and 47)

It is not the function of the Commission to determine whether the Company is bound in law by this very frank admission of Mr. Williams. However, the admission does indicate both the attitude of the Company toward resale price maintenance and the nature of the argument made on its behalf. The Company contended that for many years it has consistently supported freedom of competition and opposed price-fixing and price maintenance. Mr. Williams submitted evidence which showed that during the last few years (before 1951) the Company had been severely criticized because

of its refusal to adopt a policy designed to secure maintenance of resale prices on its products. He further stated that some time in the fall of 1949, when this criticism was particularly strong, he sent out a bulletin to all the Company's sales organization throughout Canada. A copy of page three of this bulletin was filed as Exhibit C4. Two paragraphs from this page of the bulletin read as follows:

"As you well know, we have no intention of dictating or attempting to dictate prices at which our merchandise is being sold. These prices are set on the open market and they are set based upon the demand that exists for the merchandise and the cost of handling that merchandise. This is fundamentally our policy, it always has been and it seems to be absolutely sound, based upon past history. The person who insists upon doing something in an uneconomic and inefficient way and who asks for support in that position not only eventually goes down himself but is inclined to drag others with him.

Our job as a company is to supply the best quality products that we know how to make to our customers at the lowest price consistent with proper handling. It is our belief that this is the answer which should be presented to people who bring up the vicious half truths currently being publicized in some areas."

As further evidence of the Company's policy in respect of price-fixing and resale price maintenance, Mr. Williams filed (Exhibit C7) a copy of a letter dated August 2nd, 1950, which he had written to Mr. Justice J. H. MacQuarrie, Chairman of the Committee to Study Combines Legislation. The Chairman of the Committee had written on July 11th, 1950, to Mr. Williams, as General Manager of The Procter & Gamble Company of Canada, Limited, asking for his views on matters within the Committee's terms of reference. A similar request was made of many organizations, firms and individuals. The Chairman's letter in particular had asked for comments on the practice of resale price maintenance and its effects upon the public interest. Mr. Williams' letter in reply contains the following paragraph:

"It is my personal opinion that price controls and price fixing as such limit competition, encourage inefficiency, and generally make for a more rigid, inelastic price structure that can only result in higher prices for the consumer."

(Exhibit C7)

Mr. Williams stated before the Commission that the Company's policy in regard to price-fixing and resale price maintenance has been held consistently and is still the policy which directs its practice. In the course of giving evidence, while being examined by the Company's Counsel, Mr. B. M. Osler, reference was made to the testimony of Mr. Goudreau, the Company's Montreal District Manager. Mr. Williams' testimony was as follows:

"Q. In that evidence reference was made to certain dealings with a firm called Dealers Supply. What do you have to say as to whether that kind of action is prevalent in your Company in Canada or not?

A. Mr. Chairman, Mr. Osler is asking me a question to which I ought to know the answer, because I sent a letter out to district managers throughout the country, asking them if there had been any other instances of this type of thing anywhere in their various territories. I believe we have pretty fair discipline in our organization, but that is the toughest letter I ever wrote in my life. I said, in effect, 'If there is even the faintest clue of any similar action having been taken, tell me now rather than have it turn up on some later date. Send this back to me with your positive affirmation of exactly what the situation is.' I was informed by each of the district managers in all the various territories throughout Canada that there were no similar cases of any nature in the territories under their jurisdiction.

BY THE CHAIRMAN:

Q. When was this done?

A. This was done just after I heard about the testimony that was given in Montreal. I will say to the best of my knowledge, - and I believe it to be absolutely accurate and I can safely say it, - this is the only case of its kind that has ever occurred in Canada in our organization, and I might also say that I believe it occurred for one reason only. The Montreal area in particular and the Province of Quebec in general have more small stores than any other part of the country except the Maritimes, and that area through the Maritimes clear to the Ontario border is all under the control of Mr. Goudreau as well. Having so many small retailers and having relatively high-priced jobbers in his territory, the pool-car is therefore more important to him perhaps than it is to a district manager anywhere else in Canada; and my belief is, - I might say my knowledge but I can certainly say my absolute belief, - that this one case happened simply because of, if you like, misguided enthusiasm but certainly enthusiasm for protecting something which is of tremendous value to the eight thousand retailers in Quebec. Mr. Goudreau was trying to preserve something which he thought was valuable, and, as I think the testimony shows, he made a mistake, a mistake involving an offence against Canadian law. I think it is fairly obvious that this company would not violently oppose naming prices on its products at a time when there was no clearcut law forbidding such fixing, as is indicated in the bulletin which I have filed with the Commission, and then start doing exactly the opposite immediately after such a law was passed. I believe this is the only case that has existed in Canada where we have

deprived any customer, of whatever size, of the right to purchase our merchandise because of cutting prices. That applies to any man, jobber, retailer, chain store, or anyone else. Nowhere, at any time, before the passage of the law or after, was there any other case."

(Evidence, November 24, 1952,
pp. 28 to 30)

Mr. Williams' letter to the Company's District Managers, dated October 10, 1952, to which he was referring in the foregoing evidence, contained the following statements:

"It is your personal responsibility to make absolutely certain that not only you, but much more important, your territorial managers and your entire group of retail salesmen understand that for years we have resisted any attempts to get us to enforce prices."

"Certainly it is obvious that we have not changed to the other side of the fence at precisely the sametime that the Canadian Government has brought in legislation forbidding such action."

"Please also understand, as has been stated over and over, that we cannot name prices at either the jobber, chain or retail level. You may 'suggest' but you can go no further than that and you cannot deprive any account of the right to handle our merchandise should he decide not to sell at the suggested prices."

Mr. Williams, under cross-examination, agreed that Mr. Goudreau, as Manager of the Montreal District, had full authority to "put jobbers on or take jobbers off, or do anything of that sort, if he wants to do it", but maintained that in this one case "he went outside of company policy" (Evidence, November 24, 1952, pp. 42 and 43).

Mr. Goudreau's own testimony was to the same effect. When questioned as to the Company's policy with respect to the suggested jobber warehouse prices, he said:

"A. By the company, the policy has been that the company says we can suggest a price to the wholesaler and that we can go to him and explain to him the operation of our pool-car plan and the benefits to the retailer and to the wholesaler in being a distributor in that plan; but that is all. I mean, they have been quite explicit in the fact that it is a suggested price only.

Q. Have efforts been made to enforce the maintenance of these suggested resale prices?

A. In one instance which has come to my attention, - that is, Dealers Supply, - and that was not company policy. It was

due to a little overzealousness on my part, and if I may take a minute I would like to tell you why. "

(Evidence, October 20, 1952,
pp. 46 and 47)

Mr. Goudreau then described in some detail the difficulties for the Company's "Pool Car" plan where a jobber, by selling below the suggested warehouse prices, induced retailers to buy from him direct instead of under the "Pool Car" plan, thereby reducing the number and weight of orders from that "Pool Car" area. He felt that the "Pool Car" plan was of great value to the small retailer, of whom he said there were some 11,000 in the Province of Quebec. At the bottom of page 49 of his testimony (October 20, 1952) we find this statement:

"Now, if something comes along which makes it impossible for us to get this weight within this given area, it means that the retailer cannot enjoy those quantity prices to enable him to compete with the chains. I feel very strongly about this, believe me. "

And again, near the middle of page 51 (October 20, 1952):

"So, I feel so strongly about this that maybe I was a little bit overzealous in doing what I did, but I believe that we are looking out for all the retailers on this, and we are vitally concerned in getting these products to them at a price they can compete with anybody if they want to. "

And again, concerning resale prices, his further testimony is found near the bottom of page 59 (October 20, 1952):

"Q. Have you ever discussed these matters with your superior officers in the company?

A. This question of Dealers Supply?

Q. Yes.

A. No, I didn't. It just came as a complete surprise, primarily because I am certain it is not company policy and I am certain that they would not approve of it. I did not hide it from them, but I am interested and have been interested in seeing the grocer obtain these goods at a low price, and I just was a little overexcited, I guess. "

Nowhere in the evidence given at any of the hearings does it appear that the Procter & Gamble Company has made any attempt to prevent jobbers from billing retailers for goods shipped to them under the "Pool Car" plan at prices less than those shown on the Company's "suggested 'Pool Car' price list". The only evidence

on this point was given by Mr. Goudreau, who stated (October 20, 1952, p. 53) that: "There is nothing that says that he cannot bill those at any quantity less, or at any price less than the prices shown on there." The prices here referred to by Mr. Goudreau were the suggested "Pool Car" prices.

The testimony of Mr. Williams and Mr. Goudreau on the questions of Company policy, and on Mr. Goudreau's personal responsibility for withholding supplies from the Dealers' Supply Company, was not disputed by other evidence.

CHAPTER IV

SUMMARY AND CONCLUSIONS

1. By amendment made to the Combines Investigation Act in December, 1951, the practice of resale price maintenance on the part of a manufacturer or other supplier was forbidden. The practice has been described as follows in the interim report of the Committee to Study Combines Legislation, whose recommendation was given effect in the amending legislation:

"By resale price maintenance we understand the practice designed to ensure that a particular article shall not be resold by retailers, wholesalers or other distributors at less than the price prescribed by the supplier, that is, in most cases, the manufacturer."

The amendment forbids a manufacturer or other supplier from requiring or inducing, directly or indirectly, any other person to resell an article at a specified price or at not less than a minimum price and makes it unlawful for a supplier to refuse to sell or supply an article or commodity to any other person for the reason that such person has sold or offered to resell the article or commodity at less than a price specified by the supplier or has refused to sell or offer for sale the commodity at not less than a specified price.

The prohibition of the practice of resale price maintenance as defined in the new section of the Combines Investigation Act does not by its terms proscribe the issuance by a supplier of list prices relating to different levels of distribution if no attempt is made to require or induce the observance of such list prices as specific or minimum prices. The new section does not refer to maximum prices and thus leaves unchanged the position of a supplier with respect to the designation and enforcement of maximum prices.

The report on resale price maintenance by the Committee to Study Combines Legislation was the subject of considerable discussion in trade and other circles and the passage of the legislation forbidding the practice of resale price maintenance received wide public attention. The essential features of the new section consequently had been generally noted by traders and others when the prohibition became effective at the close of 1951. It would be expected, therefore, that any person who believed that his position was being adversely affected by any action of a supplier in apparent contravention of the new section would not hesitate to lay information as to his position before the agency responsible for inquiries under the Combines Investigation Act, the investigatory provisions of which had been extended to the new section. At all events, this was the case with respect to the matter which forms the subject of this report.

2. It was alleged before this Commission that The Procter & Gamble Company of Canada, Limited, had, by threat, promise or other means, attempted to require or induce The Dealers' Supply Company Limited, of Granby, in the Province of Quebec, to resell soap and soap products at a price not less than a minimum price specified by The Procter & Gamble Company of Canada, Limited.

It was further alleged before this Commission that, when this attempt failed to succeed, The Procter & Gamble Company of Canada, Limited, stopped supplying soap and soap products to The Dealers' Supply Company Limited.

3. The inquiry in this case was initiated prior to November 1, 1952, the date on which the present Commission took up its duties and was brought before us under the transitional provisions of Chapter 39 of the Statutes of Canada, 1952. The task of the Commission in reviewing evidence in this case has been made less difficult by reason of the fact that there has been no dispute as to the essential facts. Indeed it might be said that there has been general agreement as to the relation of these facts to the section of the Combines Investigation Act dealing with resale price maintenance.

4. It has been the practice of The Procter & Gamble Company of Canada, Limited, a large manufacturer of soap and related products which are distributed on a nationwide basis, to issue lists of resale prices to the trade. This practice has been carried on for a considerable time, beginning at least some years prior to 1951, and is related to a system of distribution, described by the Procter & Gamble Company as the "Pool Car" plan.

Under this plan salesmen of the manufacturer, attached to various district offices of the Company, take orders from individual retailers in a particular area. Such orders are accumulated until the total quantity is sufficient for a "Pool Car" shipment from the factory at Hamilton, Ontario, to the particular area from a central point in which the individual orders are delivered to the respective retailers by truck. Although the Procter & Gamble Company solicits the orders and assumes responsibility for their delivery, the transactions are completed by having a wholesaler, designated by the retailer, take over the invoices and secure payment from the retailer to whom the soap products are delivered.

In connection with this system of distribution, the Procter & Gamble Company, in all but possibly one of its sales territories, issues two series of resale prices. In one series are listed prices, usually on a quantity basis, for purchases by retailers on the "Pool Car" basis referred to above. The other list of prices contains a suggested price for various products on sales by a wholesaler to a retailer out of the former's warehouse stocks of Procter & Gamble products. The prices for "Pool Car"

shipments have had as their basis a relatively small advance over Procter & Gamble's carload prices for the same products. In the case of the Montreal District, with which this report is principally concerned, the "Pool Car" prices to retailers, depending on quantity, represented advances of one to three per cent over the carload prices plus five cents per case.

The suggested wholesaler-retailer price for ex-warehouse sales, called "jobber warehouse price", while higher than the "Pool Car" price, was stated in evidence to be based on a smaller margin than usually prevailed in the wholesale trade in the sale of similar products.

From one point of view, both the "Pool Car" price and the suggested jobber warehouse price served principally as "maximum" prices in that the retailer would be aware that he need pay no more than the listed prices in order to secure Procter & Gamble products, and that, if one wholesaler was not prepared to sell to him at a price as low as that suggested, there were probably alternative sources from which he could make purchases at prices no higher than those indicated. If the price lists had served only this purpose, it is evident that the matter to which this report is now directed would not have arisen.

5. For some years the district office of the Procter & Gamble Company in Montreal has been under the management of Mr. R. E. Goudreau, whose district embraces the Maritime Provinces, including Newfoundland and all but the extreme western portion of the Province of Quebec. In the spring of 1952, reports, apparently of a verbal nature, from Procter & Gamble salesmen, reached Mr. Goudreau that one wholesaler handling the Company's products was reselling them at prices below the suggested jobber warehouse prices issued by the Procter & Gamble Company for the Montreal District. These reports were to the effect that The Dealers' Supply Company Limited, Granby, P.Q., was offering Procter & Gamble products to certain selected customers at prices lower than the suggested jobber warehouse prices listed by the Procter & Gamble Company, although not as low as the prices listed for "Pool Car" sales.

6. From the evidence obtained by the former Commissioner of the Combines Investigation Act (now the Director of Investigation and Research) and from that tendered at the hearing before this Commission, it appears that on or about the 22nd day of April, 1952, Mr. L. C. Tremblay, the Company's General Supervisor of Salesmen in the Montreal Territory, who acted under instructions given him by Mr. Goudreau, attempted, on behalf of The Procter & Gamble Company of Canada, Limited, to require or induce The Dealers' Supply Company Limited to resell Procter & Gamble soap and soap products at prices not less than the resale

prices specified for such products respectively in the current "suggested jobber warehouse price list". On this occasion the threat was made by Mr. Tremblay to Mr. R. N. Mitchell, Manager of The Dealers' Supply Company Limited, that supplies of Procter & Gamble products might be withheld, if his company continued to resell these soap products to retailers buying otherwise than under the "Pool Car" plan, at prices lower than those specified in the said list.

7. On or about the 27th day of May, 1952, having been informed that The Dealers' Supply Company Limited were continuing to resell Procter & Gamble products to retailers at prices lower than those shown on the current "suggested jobber warehouse price list", Mr. Goudreau ordered delivery of his Company's products to Mr. Mitchell's company to be suspended. With the exception of one small order for a bulk shortening product, shipments were in fact suspended until the 6th day of August, 1952. On that day Mr. Mitchell told Mr. Tremblay by telephone that he now wished to co-operate with the Procter & Gamble Company. The Dealers' Supply Company was thereupon reinstated as a wholesaler and orders sent in by it were again accepted and shipped.

8. This attempt to enforce the maintenance by a wholesaler of the resale prices specified in Procter & Gamble's "suggested jobber warehouse price list" was initiated by and carried out under the express instructions of the Montreal District Sales Manager of the Company, Mr. R. E. Goudreau. The evidence does not disclose that any of the following persons mentioned in the Commissioner's statement of evidence, namely: T. J. Petit, Procter & Gamble's Montreal Office Manager, Frank Mella, a territorial Manager for the Company, P. H. Louette, who was in charge of credit in the Montreal District during the period covered by the allegations of misconduct, Pierre Shea, who was Louette's assistant during the said period and has now replaced him, H. VanReet, Montreal District Order and Traffic man, and D. K. Russell, who was then Chief Clerk in the Montreal office, could be said to have knowingly taken any active part in the steps recited above. As was stated to the Commission, they were merely cogs in the machinery.

Each of these men was called upon to do one or more things within his assigned functions in the organization, but in so doing, each of them was only carrying out, as routine work, orders coming from Mr. Goudreau. The evidence would not justify this Commission in concluding that any of them was aware that in carrying out the orders of his superior he was doing something which formed a part of activities that are forbidden by law.

With respect to Mr. L. C. Tremblay, the General Supervisor of the Procter & Gamble Company's salesmen for the territory which includes Granby, where The Dealers' Supply

Company Limited was doing business during the period concerned, the evidence is on a different footing. He was the one who on or about April 22nd, 1952, in Granby discussed with Mr. Mitchell the advisability of the Dealers' Supply Company abiding by the "suggested jobber warehouse price list" and who clearly let him understand that he could not continue being favoured with the Company's business should he persist in reselling at prices below those specified thereon. It was also Mr. Tremblay who on or about August 6, 1952, undertook to have shipments resumed to The Dealers' Supply Company Limited, after the promise to co-operate was given by Mr. Mitchell. It must, however, be noted that Mr. Goudreau, the Montreal District Sales Manager, was Mr. Tremblay's immediate superior, and that the latter, in so far as the acts attributed to him in the allegations contained in the Commissioner's general statement of evidence are concerned, was only seeking to carry out the instructions of Mr. Goudreau.

9. The evidence contained one other instance in which the management of the Montreal office of the Procter & Gamble Company gave a wholesaler to understand that supplies might be withheld if sales were made below the suggested jobber warehouse price.
10. It is the opinion of the Commission that in the last-mentioned case, and in attempting to require or induce The Dealers' Supply Company Limited to maintain the suggested jobber warehouse prices, Mr. Goudreau was sincerely seeking to protect the system of distribution more fully described and explained earlier in this report, and known in the Procter & Gamble organization as the "Pool Car" plan.
11. It was strongly urged upon the Commission that a principal purpose of the Procter & Gamble Company in establishing the "Pool Car" plan had been to enable the average retail grocer to obtain Procter & Gamble products at the lowest possible price, so that he would be in a position to resell such products in competition with large retail organizations able to purchase on a carload basis. All the officials of the Company who gave evidence consistently maintained that the very low margin between the manufacturer's ordinary carload price and the delivered price to the small retailer, afforded by this system of distribution, did in fact greatly strengthen the small retailer's competitive position vis-à-vis the chain store.

When Mr. Goudreau and Mr. Tremblay learned that the Dealers' Supply Company was reselling Procter & Gamble products from its warehouse at prices below those specified on the current "suggested jobber warehouse price list", they viewed the situation with concern, because they thought it would create difficulties in the successful operation of the "Pool Car" plan of selling, in the Granby area. If purchases of Procter & Gamble products could be

made locally from jobbers' stocks at prices approximately the same as those offered under the "Pool Car" plan, some retailers would abandon the latter and make purchases on a day-to-day basis from the local jobber. In the opinion of the Montreal management of the Procter & Gamble Company, this would make it more difficult to secure sufficient orders for a "Pool Car" shipment in the area affected, and would necessitate widening the area from which orders were assembled if shipments were to be made with sufficient frequency to keep retailers well supplied. Such a widening of shipping territory would lead to increased costs and thus prejudice the continuation of the low margin basis on which "Pool Car" orders were being accepted.

The view of Mr. Goudreau and Mr. Tremblay was that persistent action on the part of The Dealers' Supply Company Limited in offering a more favourable price to some customers than Procter & Gamble's suggested jobber warehouse price might require a curtailment of the "Pool Car" system of distribution in the Montreal District or part of it, and thus operate eventually to the disadvantage of independent grocers, who formed a very large part of the total number of food retailers in the district.

12. However fair and sincere may have been the motives which directed Mr. Goudreau's attitude and action, we do not think that they may be invoked as a justification for contravening the prohibition enacted by Parliament against the practice of resale price maintenance. Personal interest and even the attempt to safeguard a device which may have proven useful to a manufacturer and his distributors cannot be accepted as a valid reason for adopting improper restrictive practices, even though these practices are adopted only in a well-defined and limited section of the manufacturer's activities. In other words, even if it were admitted that the purpose sought to be achieved is commendable, this fact cannot justify an attempt to attain the desired end by methods which have been banned by Parliament as contrary to the public interest. Canada's recent legislation respecting resale price maintenance was enacted for the purpose of assuring the effective preservation of free competition. If individuals were permitted to decide both that the prohibition in this respect might at times be set aside and also the circumstances under which it might be set aside - if, in other words, manufacturers were allowed to formulate their own private exceptions to the general law in order to advance what each of them might claim to be worthy purposes - there would be no certainty in the law, and so many exceptions to the basic principles of the legislation might be created that its main and essential object would be completely defeated.

13. The evidence, however, strongly supports the conclusions that the actions of the management of the Montreal office of the Procter & Gamble Company in this connection were not taken

in furtherance of any general policy of the Company, but were, rather, in direct contradiction to the course taken by it with respect to naming and seeking the observance of resale prices. This is borne out by the following extract from a letter of instructions from the Company's head office which, although written after the events above described, appears to be in entire conformity with its policy over a period of years:

"Please also understand, as has been stated over and over, that we cannot name prices at either the jobber, chain or retail level. You may 'suggest' but you can go no further than that and you cannot deprive any account of the right to handle our merchandise should he decide not to sell at the suggested prices."

Mr. Goudreau, as Sales Manager for the Montreal District for the Procter & Gamble Company, had full authority to take on wholesalers for the Company's products and also to cease to deal with them. He was in charge of the staff and responsible for discipline. Within the Company's general policy he was its responsible officer in the district. However, the making of threats to cut off supplies and the cutting off of supplies to enforce compliance with its suggested jobber warehouse price were quite contrary to the Company's policy and practice over many years. From the evidence we are of the opinion that the two instances in which a threat was used and the one case in which delivery of supplies was stopped all occurred without the knowledge or consent of the head office officials of the Company. These actions appear to have been taken entirely on the initiative of Mr. Goudreau.

14. The actions complained of in this case were, in a sense, isolated instances. Further, the general management of the Procter & Gamble Company, once it became aware of the situation, took immediate steps aimed at preventing the development of similar situations. Nevertheless, it is clearly desirable that employers should make, in advance, every effort to guard against even a first occurrence of this kind. An employing company must be held responsible for acts and things done by its officials and agents in the course of their employment and within the scope of their authority. The general management of a company cannot assume that the company will escape liability for illegal restrictive practices instituted on its behalf by subordinate officials or agents, merely because those practices were introduced or carried into effect without the actual knowledge or approval of the chief officers of the company.

Bearing in mind what is stated in the preceding paragraph and also the particular circumstances of this case, companies which issue lists of "suggested" prices might find it advantageous to inform both their employees and their customers that no compulsion or requirement is intended in the issuance

of such price lists, and that, under the law, no limitation may be placed on the freedom of a purchaser to resell the article at a lower price. If the import of the new legislation in relation to the circulation of lists of "suggested" prices were clearly explained, there would appear to be less likelihood of situations arising of the nature of those disclosed in this report.

(Sgd.) C. R. Smith

Chairman

(Sgd.) A. S. Whiteley

Member

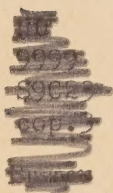
(Sgd.) Guy Favreau

Member

Ottawa,
May 1, 1953.

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Canada. Restrictive Trade Practices Commission

Report concerning alleged instances of resale price maintenance of soap products in the Montreal district

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